

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CLARKE AND REBECCA WIXON, et al.,

Plaintiffs,

No. C 07-02361 JSW

v.

WYNDHAM RESORT DEVELOPMENT
CORPORATION, et al.,

Defendants.

**ORDER RESOLVING DISPUTES
RE FORM OF AND METHOD OF
DISTRIBUTION OF CLASS
NOTICE**

The Court has received and considered the parties' Joint Status Report regarding their disputes over the form of Class Notice and the proposed methods of distribution, and the Court sets forth its ruling on the disputes in the remainder of this Order.

1. Form of Notice.

When the Court resolved Plaintiffs' Motion for Leave to File a Fourth Amended Complaint, the Court considered, and rejected, Wyndham's argument regarding the alleged ambiguities in Plaintiffs' Class Definition. The Court shall not revisit that issue. Accordingly, the Class Notice shall use the definition of the class set forth in Plaintiffs' proposed form of notice. The Court shall allow Wyndham to include the language "Wyndham does not believe the lawsuit should proceed as a class action and will seek to have the Court change its decision," as set forth on page 1 of the Proposed Notice. (Joint Report, Ex. C at p. 1.) However, that language should be included only in the section of the Notice setting forth Wyndham's position.

1 In the section of the Notice captioned “Why did I get this notice,” Wyndham correctly
2 notes that the words “you are” have been omitted and those words shall be included. (*See* Joint
3 Report, Ex. C at p. 2.)

4 In the “Basic Information” section, the Court concludes that the heading with respect to
5 Plaintiffs’ position should be identical to the heading regarding Wyndham’s position.
6 Accordingly, that heading shall read “What is Plaintiffs’ position?” Wyndham’s proposed
7 revisions to the remainder of the paragraphs discussing Plaintiffs’ position are rejected.
8 Accordingly, all references to “the relative use provision of the governing documents” may
9 remain in the notice.

10 **2. Dissemination of Class Notice.**

11 When a court certifies a class under Federal Rule of Civil Procedure 23(b), Rule
12 23(c)(2) requires that “the court must direct to class members the best notice that is practicable
13 under the circumstances, including individual notice to all members who can be identified
14 through reasonable effort.” The Court concurs with Wyndham that a separate notice sent via
15 first class mail, rather than including notice in the *Destinations* magazine, is appropriate.
16 Although Wyndham may have included inserts in *Destination* magazine regarding election
17 related matters, Plaintiffs do not suggest such inserts were sent to a subset of the WorldMark
18 membership. Here, the class in this case does not consist of all WorldMark members.

19 Moreover, while other courts have permitted notice by inserts in monthly mailings, none
20 of the cases cited by Plaintiffs involved including an insert in a magazine, and the Court finds
21 that it would be overly burdensome for Wyndham to include a special insert in a subset of the
22 *Destination* mailings. The Court also concludes that in light of the fact that the WorldMark
23 website is available to all members, Wyndham should not be required to post notice on the
24 website.

25 The Court shall not preclude Plaintiffs from posting the Class Notice on Girard Gibbs
26 website. The Court shall not require notice via electronic mail at this time. If circumstances
27 develop that cause Plaintiffs to believe that notice via first class mail is underinclusive, they
28 may seek to have the Court revisit whether notice via electronic mail would be appropriate.

